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### **State Supreme Court Ruling Preserves Local Gas Taxes**

**OLYMPIA** – July 29, 2010 The Washington State Supreme Court today upheld the state Department of Revenue’s interpretation that local brokered natural gas (BNG) use tax is imposed where the gas is burned regardless of where it is first received by the taxpayer. The decision, authored by Justice Debra Stephens, allows the Department to deny refund claims against local jurisdictions that levy these taxes and collect unreported taxes, totaling \$25 million.

At issue were differing interpretations of where “use” occurs for purposes of the local BNG use tax. More than 50 Washington cities impose a local BNG use tax, including Tacoma where G-P Gypsum consumed the natural gas that it first held in unincorporated Whatcom County before transferring to Tacoma. G-P Gypsum had argued that “use” occurs where it first takes control of the gas. Unincorporated areas of Whatcom County do not impose a local BNG use tax. G-P Gypsum’s position was supported in a May 2008 state Court of Appeals opinion.

Today’s 5-4 ruling overturns that Court of Appeals decision. Since May 2008, the Department has received refund requests for previously paid local BNG use tax totaling more than \$14 million. Based on today’s ruling, the Department will deny those refund requests. Since the Court of Appeals opinion, some taxpayers had stopped reporting the local portion of BNG use tax. The Department is billing these businesses more than \$11 million for the unreported tax.

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In finding for the Department, the court's majority opinion stated, "The legislature expressed its clear purpose to authorize municipalities to tax entities for the use of natural gas within city limits."

Earlier this year, the state Legislature passed ESHB 3179 to clarify that the local BNG use tax is imposed where a taxpayer burns or stores gas. The law went into effect June 10, 2010, and applies to the use of natural gas on or after that date; the Court's decision applies to the use of gas before June 10, 2010. The Department has issued a Special Notice on the effects of this law. It's available at [http://dor.wa.gov/docs/pubs/specialnotices/2010/sn\\_10\\_brokerednatgas.pdf](http://dor.wa.gov/docs/pubs/specialnotices/2010/sn_10_brokerednatgas.pdf).

The case is *G-P Gypsum Corp. v. Department of Revenue*. Related documents, including the decision and dissent, are online at [courts.wa.gov](http://courts.wa.gov).

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